

January 18, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —
JOHN CORNYN
Attorney General

— * —
P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-0115

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121172.

The City of Dallas Police Department (the "department") received a request for copies of each page of the "Jail Log Book" from January 1, 1997 to December 31, 1997, and copies of all "Summary Discipline" on four specified officers. In response to the request, you submit to this office for review a copy of the records which you assert are responsive. You represent that some of the responsive information has been released to the requestor. However, you assert that the remaining information is excepted from disclosure based on sections 552.101 and 552.108 of the Government Code, as well as section 261.201 of the Family Code. We have considered the exceptions you claim and reviewed the submitted information.

We first consider whether the requested records contain information that may be confidential and excepted from disclosure under section 552.101, in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code reads as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be

disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

The submitted highlighted information consists of documents which we believe are "reports, records, communications, . . . and working papers used or developed" in an investigation conducted under and subject to chapter 261 of the Family Code. Because you have not cited any specific rule that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the highlighted information in the submitted records is confidential pursuant to section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Consequently, the department must withhold the highlighted information pursuant to section 261.201(a) of the Family Code, in conjunction with section 552.101 of the Government Code.

As we conclude that the department must withhold the highlighted information based on section 552.101, we need not consider your section 552.108 claim.¹ We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at

¹However, we note that section 552.108 is not applicable when no criminal investigation is undertaken. *See Morales v. Ellen*, 840 S.W.2d at 526 (predecessor statute to section). In fact, this office has determined that section 552.108 does not protect general personnel information from public disclosure. *Open Records Decision No. 562 at 10 (1990) (applying predecessor statute)*. Furthermore, please be aware that inadequate briefing on the applicability of an exception, such as section 552.108, to required public disclosure may result in the waiver of that exception. *See Open Records Decision No. 363 (1983) (if governmental body does not establish how and why exception applies, no basis exists for pronouncing it protected)*.

Mr. Saul Pedregon -- Page 3

issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" being more prominent than the last name "Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 121172

Enclosures: Submitted documents

cc: Mr. Harold Beil
1312 Bryan Place
Seagoville, Texas 75159
(w/o enclosures)